

both the Treasurer of the Territory and such other person or persons as joint defendants.

SECTION 98. Where there are defendants other than the Treasurer of the Territory, and where judgment is entered for the plaintiff against the Treasurer and against some or all of the other defendants, execution shall issue against the other defendants and be levied upon them. If the execution is returned unsatisfied in whole or in part, and the officer returning the same certifies that the amount due cannot be collected from the lands or goods of such other defendants, a Judge of the Circuit Court rendering the judgment shall direct the clerk to certify to the Governor the amount due on the execution, and the Governor shall draw his warrant therefor upon the Treasurer of the Territory, and the Treasurer shall pay the amount out of the assurance fund, without any further act or resolve making an appropriation therefor.

When in such action judgment for any reason cannot be entered against all or any of the other defendants it may be entered against the Treasurer alone, or against the Treasurer and such of the other defendants as are found to be liable, and against whom judgment can lawfully be entered. Whenever judgment is entered against the Treasurer of the Territory alone, whether in a case where he is sole defendant or joint defendant with others, the Judge of the Circuit Court before whom the action is tried shall cause the clerk to transmit to the Governor a certificate of the entry of judgment and of the amount due, and the Treasurer shall pay the same upon the warrant of the Governor, as above provided.

SECTION 99. If the assurance fund at any time is not sufficient to meet the amount called for by such warrant of the Governor, the Treasurer shall make up the deficiency from any funds in the Treasury not otherwise appropriated; and in such case any sums thereafter received by the Treasurer on account of the assurance fund shall be transferred to the general funds of the Treasury, until the amount paid on account of the deficiency shall have been made up.

SECTION 100. In every case where payment has been made by the Treasurer of the Territory under warrant from the Governor, the Territory shall be subrogated to all rights of the plaintiff against any other parties or securities, and the Treasurer shall enforce the same in behalf of the Territory. Any sums so recovered by the Treasurer shall be paid into the Treasury of the Territory to the account of the assurance fund.

SECTION 101. The income of the assurance fund shall be added to the principal and invested, until and while said fund amounts to the sum of Two Hundred Thousand Dollars, and thereafter and while the said sum shall remain, the income of such fund shall be used to defray, as far as may be, the expenses of the administration of this Act, instead of being added to the fund and accumulated.

SECTION 102. The assurance fund shall not be liable to pay for any loss, damage or deprivation occasioned by a breach of trust, whether express, implied or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage. Nor shall any plaintiff recover as compensation in an action of contract under this Act more than the fair market value of the real estate at the time when he suffered the loss, damage, or deprivation thereof.

SECTION 103. All actions of contract for compensation under this Act by reason of any loss or damage or deprivation of land, or any estate or interest therein, shall be begun within the period of six years from the time when the cause of action accrued, and not afterwards; *provided, however*, that the plaintiff in an action for the recovery of the land or estate or interest therein in accordance with Section 97 of this Act may bring the action of contract for compensation within one year after the termination of such action; and, *provided, further*, that the action of contract herein provided shall survive to the personal representative of the registered owner, unless barred in his life time, but the proceeds thereof shall be treated as real estate.

#### POWERS OF ATTORNEY.

SECTION 104. Any person may by attorney procure land to be registered and convey or otherwise deal with registered land, but the letters of attorney shall be acknowledged and filed with the Registrar or the Assistant Registrar of the proper registry district, and registered. Any instrument revoking such letters shall be acknowledged and registered in like manner.

#### LOST DUPLICATE CERTIFICATES.

SECTION 105. If a duplicate certificate is lost or destroyed, or cannot be produced by a grantee, heir, devisee, assignee or other person, applying for the entry of a new certificate to him, or for the registration of any instrument, a suggestion of the fact of such loss or destruction may be filed by the registered owner or other person in interest, and registered. The Court may thereupon, upon the petition of the registered owner or other person in interest, after notice and hearing, direct the issue of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of a lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as the original duplicate for all the purposes of this Act.

#### ADVERSE CLAIMS.

SECTION 106. Whoever claims any right or interest in registered land adversely to the registered owner arising subsequent to the date of original registration may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed. The statements shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the Court, upon the petition of any party in interest, may require an approved bond to be filed for the payment of double costs if so taxed, and shall grant a speedy hearing upon the question of the validity of such adverse

claim, and shall enter such decree thereon as justice and equity may require. If the claim is adjudged to be invalid or the bond is not filed, the registration shall be cancelled. If in any case the Court, after notice and hearing, shall find that the claim thus registered was frivolous or vexatious, it may tax the adverse claimant double costs.

#### SURRENDER OF DUPLICATE CERTIFICATES.

SECTION 107. In every case where the Registrar or any Assistant Registrar is requested to enter a new certificate in pursuance of an instrument purporting to be executed by the registered owner, or by reason of any instrument or proceedings which divest the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the Registrar or Assistant Registrar shall not enter a new certificate, but the person claiming to be entitled thereto may apply by petition to the Court. The Court, after a hearing may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate upon such surrender.

If in any case the person withholding the duplicate certificate is not amenable to the process of the Court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered up, the Court may by decree annul the same, and order a new certificate of title to be entered. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

If in any case an outstanding mortgagee's or lessee's duplicate certificate is not produced and surrendered when the mortgage is discharged or extinguished or the lease is terminated, like proceedings may be had to obtain registration as in the case of the non-production of an owner's duplicate.

#### AMENDMENT AND ALTERATION OF CERTIFICATES OF TITLE.

SECTION 108. No erasure, alteration or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon, and the testation of the same by the Registrar or an Assistant Registrar except by order of the Court. Any registered owner or other person in interest may at any time apply by petition to the Court, upon the ground that registered interests of any description, whether vested, contingent, expectant or inchoate have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered as married that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution, or upon any other reasonable ground; and the Court shall have jurisdiction to hear and determine the petition after notice to all parties in interest and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper; *provided, however*, that this Section shall not be construed to give the Court authority to open the original decree of registration, and that nothing shall be done or ordered by the Court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent.

Any petition filed under this Section and all petitions and motions filed under the provisions of this Act after original registration shall be filed and entitled in the original case in which the decree of registration was entered.

#### SERVICE OF NOTICE AFTER REGISTRATION.

SECTION 109. All notices required by or given in pursuance of the provisions of this Act by the Registrar or any Assistant Registrar after original registration, shall be sent by mail to the person to be notified at his residence and post-office address as stated in the certificate of title or in any registered instrument under which he claims an interest, in the office of the Registrar or Assistant Registrar relating to the parcel of land in question.

All notices and citations directed by special order of the Court under the provisions of this Act, after original registration may be served in the manner above stated, and the certificate of the Registrar shall be conclusive proof of such service; *provided, however*, that the Court may in any case order different or further service by publication or otherwise.

#### FEES FOR REGISTRATION.

SECTION 110. The fees payable under this Act shall be as follows:

For every application to bring land under this Act, including indexing and recording the same, and transmitting to Registrar, when filed with Assistant Registrar, Three Dollars.

For every plan filed, One Dollar.

For indexing any instrument recorded while application for registration is pending, Twenty-five Cents.

For examining title, Ten Dollars, and one-twentieth of one per cent. of the value of the land.

For each notice by mail, Twenty-five cents and the actual cost of printing.

For all services by a Sheriff under this Act, the same fees as are now provided by law for like services.

For each notice by publication, Twenty-five Cents, and the actual cost of publication.

For entry of order dismissing application, or decree of registration, and sending memorandum to Assistant Registrar, One Dollar.

For copy of decree of registration, One Dollar.

For entry of original certificate of title and issuing one duplicate certificate, Three Dollars.

For making and entering a new certificate of title including issue of one duplicate certificate, One Dollar.

For each additional duplicate certificate, after the first, Fifty Cents.

For the registration of every instrument, whether single or in duplicate or triplicate, including entering, indexing and filing same and attesting registration thereof, and also making

and attesting copy of memorandum on one instrument or on a duplicate certificate when required, One Dollar and Fifty Cents.

For making and attesting copy of memorandum on each additional instrument or duplicate certificate if required, Fifty Cents.

For filing and registering an adverse claim, Three Dollars. For entering statement of change of residence or postoffice address, including indorsing and attesting same on a duplicate certificate, Twenty-five Cents.

For entering any note in the entry book or in the registration book, Twenty-five Cents.

For registration of a suggestion of death or notice of issue of an order in bankruptcy, Twenty-five Cents.

For the registration of a discharge or release of mortgage or other instrument creating an encumbrance, One Dollar.

For the registration of a memorandum or certificate of entry for possession or deposition in proof thereof, One Dollar.

For the registration of any levy, or of any discharge or dissolution of any attachment or levy, or of any certificate of receipt for payment of taxes, or of any mechanic's lien or lien for labor or materials, or notice of any pending action, or of a judgment or decree, One Dollar.

For endorsing on any mortgage, lease or other instrument a memorandum of partition, One Dollar.

For every petition filed under this Act after original registration, One Dollar.

For a certified copy of any decree or registered instrument, the same fees as are provided by law for recorders.

In all cases not expressly provided for by law the fees of all public officers for any official duty or service under this Act shall be at a rate established by the Court.

#### PENALTIES.

SECTION 111. Certificates of title and duplicate certificates issued under this Act are subjects of larceny.

SECTION 112. Whoever knowingly swears falsely to any statement required to be made under oath by this Act shall be guilty of perjury, and liable to the statutory penalties for perjury.

SECTION 113. A certificate of title, duplicate certificate of title, certificate issued in place of a duplicate certificate, the registration book, entry book, and all indexes provided for by this Act, and the docket of the recorded, shall be treated as if specially described and enumerated in Penal Code, Chapter 16 (Penal Laws, 1897, Chapter 16).

SECTION 114. Whoever forges or procures to be forged, or assists in forging the seal of the Court of Land Registration, or stamps or procures to be stamped, or assists in stamping any document with such forged seal, or with the genuine seal of the Court of Land Registration without being duly authorized thereto, shall be punished by imprisonment, not exceeding ten years.

SECTION 115. Whoever, with intent to defraud, sells and conveys registered land knowing that an undischarged attachment or any other encumbrance exists thereon which is not noted by memorandum on the duplicate certificate of title, without informing the grantee of such attachment or other encumbrance before the consideration is paid shall be punished by imprisonment not exceeding three years.

SECTION 116. Until the organization of the County government and the appointment and qualification of the County officers, all transactions with regard to registered land shall be performed by the officers of the Honolulu office, and dealings with registered lands shall be conducted in Honolulu.

SECTION 117. This Act shall take effect from and after July 1st, 1903.

Approved this 28th day of April, A. D. 1903.

SANFORD B. DOLE.

Governor of the Territory of Hawaii.

#### ACT 57.

AN ACT TO AMEND ACT 18 OF THE LAWS OF THE PROVISIONAL GOVERNMENT, AND BEING SECTION 868 OF THE PENAL LAWS RELATING TO THE BOARD OF HEALTH.

Be it Enacted by the Legislature of the Territory of Hawaii:

SECTION 1. Act 18 of the Laws of the Provisional Government, and being Section 868 of the Penal Laws, relating to the Board of Health, be and the same is hereby amended so as to read as follows:

"Section 868. There shall be a Board of Health for the Territory of Hawaii consisting of seven members, four of whom shall be laymen, two physicians, and the Attorney-General *ex officio*. The members of the said Board shall be appointed by the Governor, who shall also appoint the President, with the advice and consent of the Senate of the Territory of Hawaii, and shall be commissioned for two years. All of the members of the said Board shall serve without pay, except the President, whose salary shall be provided by the Legislature. The President of the Board shall preside at the meetings of the Board, and in case of his absence, any member of the Board may be chosen to preside over the meetings of the Board. The Board shall appoint its Secretary, agents and physicians, who shall receive such compensation for their services as shall be provided by the Legislature."

"The Board shall have general charge, oversight and care of public health, and shall make, through its President, an annual report to the Governor, showing in detail all its expenditures and transactions, and such other information regarding the public health as the Board may deem of special interest."

SECTION 2. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

SECTION 3. This Act shall take effect from and after its approval.

Approved this 28th day of April, 1903.

SANFORD B. DOLE,

Governor of the Territory of Hawaii.

#### ACT 58.

AN ACT TO CONVERT LAND AT PONAHAUAI, HILO, ISLAND OF HAWAII, INTO FREE PUBLIC RECREATION GROUND, AND TO